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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,694	03/25/2004	Frederic Legrand	LOREAL 3.0-019	6067

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EXAMINER	
ELHILO, EISA B	

ART UNIT	PAPER NUMBER
1796	

MAIL DATE	DELIVERY MODE
11/29/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/808,694	LEGRAND ET AL.	
	Examiner	Art Unit	
	Eisa B. Elhilo	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 September 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6,8-29 and 31-63* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6,8-29 and 31-63* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *10/30/20079*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

ETAILED ACTION

1 This action is responsive to the amendment filed on September, 25, 2007.

2 The rejection of claims 1-5, 8-20, 22-28, 31-49 and 52-63 under 35 U.S.C. 103(a) as being unpatentable over Dias (US' 791 B1) in view of Nguyen et al. (US' 384 A1) is maintained for the reasons set forth in the previous office action mailed on March 22, 2007.

3 The rejection of claims 6 and 21 under 35 U.S.C. 103(a) as being unpatentable over Dias (US' 791 B1) in view of Nguyen et al. (US' 384 A1) and further, in view of Huglin et al. (US' 730) is maintained for the reasons set forth in the previous office action mailed on March 22, 2007.

4 The rejection of claims 29 and 50-51 under 35 U.S.C. 103(a) as being unpatentable over Dias (US' 791 B1) in view of Nguyen et al. (US' 384 A1) and further, in view of Di La Mettrie et al. (US' 646 B1) is maintained for the reasons set forth in the previous office action mailed on March 22, 2007.

Response to Applicant's Arguments

5 Applicant's arguments filed 9/25/2007 have been fully considered but they are not persuasive.

With respect to the rejection of claims 1-5, 8-20, 22-28, 31-49 and 52-63 under 35 U.S.C. 103(a) as being unpatentable over Dias (US' 791 B1) in view of Nguyen et al. (US' 384 A1), Applicant argues that Nguyen et al. (US' 384 A1) teaches a list of optional ingredients includes over 10 different classes of ingredients among these being sequestering agents which are structurally distinct from the polycarboxylic acid sequestering agents recited in the claimed invention.

The examiner respectfully disagrees with the above arguments because the use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain. "*In re Heck*, 699 F.2d 1331, 1332-33 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting *In re lemelson*, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). Further, a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including non-preferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed.Cir.), *cert. denied*, 493 U.S. 975 (1989).

In this case, Dias (US' 791 B1) as a primary reference suggests the use of polyaminocarboxylic acids (polycarboxylic acids) as sequestering agents in a hair treating formulation (see col. 8, lines 44-46). Hguyen et al. (US' 384 A1) in analogous art of hair treating formulation, teaches a composition comprising sequestering agents (complexing agents) such as lauroyl ethylene diamine triacetic acid that represents the claimed formula (I) and formula (III) as recited in the specification at page 8 (see page 5, paragraph, 0045 and STIC search report at page 21). Therefore, there is a clear suggestion and sufficient modification to one having ordinary skill in the art to be motivated to incorporate lauroyl ethylene diamine triacetic acid as taught by Hguyen et al. (US' 384 A1) in the hair treating composition of Dias (US' 791) to arrive at the claimed invention with the reasonable expectation of success for delivery of controlled oxidizing action of the composition. Therefore, the prima facie of obviousness has been established.

Furthermore, with respect to applicant's arguments based on the comparative data in Example 1, the examiner's position is that the comparative data in not commensurate with the

teaching of the closest prior art of record because the data uses and compares sequestering agents such as (EDTA) and (DETAPAC) which are not within the disclosure of Dias (US' 791 B1) as a closest prior art of record that teaches sequestering agents for stabilizing and the delivery of controlled oxidizing action (see col. 8, lines 14-24) and these sequestering agents include cyclohexane-1,2-diaminoteterakis phosphonic acid (CDTMPA) and ehtylenediamine-N,N-dissuccinic acid (EDDS) (see col. 8, lines 37-51). Therefore, the applicant's arguments are not persuasive.

Furthermore, applicants have not shown on record the criticality of the claimed combination of oxidizing composition with the compounds of the claimed formula (I).

With respect to the rejection of claims 50 and 51, Applicant argues that none of the cited references teaches applying a reducing agent followed by application of a combination of a sequestering agent of formula (I) and oxidizing agent.

The examiner respectfully disagrees with the above arguments because Dias (US' 791 B1) clearly teaches and discloses that sequestering agents are used for stabilizing the oxidizing composition as mentioned above. Di La Mettrie et al. (US' 646 B1) clearly teaches a process for reshaping hair comprising the step of applying to the hair a reducing composition followed by applying an oxidizing composition (see col. 13, lines 9-19). Therefore, there is a clear suggestion and sufficient motivation to one having ordinary skill in the art to be motivated to incorporate the sequestering agents as taught by Dais (US' 791) in the oxidizing composition of De la Mettire et al. (646 B1) for stabilizing the oxidizing composition that applied to the hair after the applying reducing step. Therefore, the prima facie case of obviousness has been established.

With respect to claim 29, applicant argues that none of the cited references teaches devices containing a reducing agent and a combination of an oxidizing agent with a sequestering agent as claimed.

The examiner respectfully disagrees with the above argument because Dias (US' 791) clearly teaches and suggests that sequestering agents are used in the oxidizing composition for stabilizing purposes as described above. De L a Mettire et al. (US' 646) clearly teaches and discloses kits to maintain different compositions separately (see col. 13, lines 1- 8). De la Mettire et al. also teaches that the reducing composition and the oxidizing composition are applied separately to the hair (see page 13, lines 20-55). Therefore, the is a clear suggestion to one having ordinary skill in the art to be motivated to keep and maintain compositions with different performances and properties in separate kits or devices and would expect these kits to have properties similar to those claimed.

6 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pyon Harold can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eisa Elhilo/
Primary Examiner, A.U. 1796
November 27, 2007